

SENATE BILL NO. 327

INTRODUCED BY CURTISS, ARNTZEN, BALES, B. BECK, BENNETT, BLASDEL, BONIEK, BUTCHER,
HIMMELBERGER, HINKLE, JACKSON, KERNS, MCGEE, MCGILLVRAY, MENDENHALL, MORE,
MURPHY, O'HARA, PERRY, K. PETERSON, RANDALL, REGIER, REICHNER, SALES, SMITH, SONJU,
VINCENT, WASHBURN, WINDY BOY

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ADOPTING THE PROTECTION FOR MOTHERS-TO-BE ACT;~~
~~CREATING CRIMINAL OFFENSES INVOLVING DEATH OR INJURY TO AN UNBORN CHILD; PROVIDING~~
~~PENALTIES; PROVIDING FOR AN ADDITIONAL SENTENCE FOR A PERSON CONVICTED OF ASSAULT OR~~
~~AGGRAVATED ASSAULT ON A PREGNANT WOMAN; AND AMENDING SECTION 41-1-103, SECTIONS~~
~~45-5-102; AND 45-5-103, 45-5-201, AND 45-5-202, MCA."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Short title.~~ [Sections 1 through 8] may be cited as the "Protection for
Mothers-to-Be Act".

~~NEW SECTION. Section 1. Definition.~~ As used in ~~[sections 1 through 8]~~ 45-5-102, 45-5-103, AND
[SECTION 5], "unborn child" means a human who is conceived but is not yet born.

~~NEW SECTION. Section 3. Deliberate homicide of unborn child.~~ (1) A person commits the offense
of deliberate homicide of an unborn child if the person attempts to commit, commits, or is legally accountable for
the attempt or commission of any offense listed in 45-5-102(1)(b) or any other forcible felony and, in the course
of the forcible felony or flight after committing a forcible felony, the person or any person legally accountable for
the crime causes the death of an unborn child.

~~(2) A person convicted of the offense of deliberate homicide of an unborn child shall be punished by~~
~~imprisonment in a state prison for a term of not less than 10 years or more than 100 years, except as provided~~
~~in 46-18-249 and 46-18-222.~~

~~NEW SECTION. Section 4. Mitigated deliberate homicide of unborn child.~~ (1) A person commits

~~the offense of mitigated deliberate homicide of an unborn child when the person purposely or knowingly causes the death of an unborn child but does so under the influence of extreme mental or emotional stress for which there is a reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.~~

~~——— (2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide of an unborn child to mitigated deliberate homicide of an unborn child and must be proved by the defendant by a preponderance of the evidence.~~

~~——— (3) Mitigated deliberate homicide of an unborn child is not an included offense of deliberate homicide of an unborn child as described in [section 3(1)].~~

~~——— (4) A person convicted of mitigated deliberate homicide of an unborn child shall be imprisoned in a state prison for a term of not less than 2 years or more than 40 years and may be fined an amount not more than \$50,000, except as provided in 46-18-219 and 46-18-222.~~

~~——— **NEW SECTION. Section 5. Assault on unborn child.** (1) A person commits the offense of assault on an unborn child if the person inflicts substantial bodily harm upon an unborn child, who is subsequently born alive, by purposely or knowingly making physical contact of an insulting or provoking nature with a pregnant woman without the woman's consent.~~

~~——— (2) (a) As used in this section, "substantial bodily harm" includes but is not limited to the birth of an unborn child prior to 37 weeks of gestation if the child weighs 2,500 grams or less at the time of birth.~~

~~——— (b) Substantial bodily harm does not include the inducement of the unborn child's birth when done for bona fide medical purposes.~~

~~——— (3) A person convicted of assault on an unborn child shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~

~~——— **NEW SECTION. Section 6. Aggravated assault on unborn child.** (1) A person commits the offense of aggravated assault on an unborn child if the person inflicts serious bodily harm upon an unborn child, who is subsequently born alive, by purposely or knowingly making physical contact of an insulting or provoking nature with a pregnant woman without the woman's consent.~~

~~——— (2) A person convicted of aggravated assault on an unborn child shall be imprisoned in the state prison~~

1 ~~for a term of not less than 2 years or more than 20 years and may be fined an amount not more than \$50,000,~~
2 ~~except as provided in 46-18-219 and 46-18-222.~~

3
4 **SECTION 2. SECTION 45-5-102, MCA, IS AMENDED TO READ:**

5 **"45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

6 (a) the person purposely or knowingly causes the death of another ~~human-being person or an unborn~~
7 ~~child~~; or

8 (b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of
9 robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious
10 escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible
11 felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another
12 ~~human-being person or an unborn child.~~

13 (2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in
14 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of
15 the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or
16 more than 100 years, except as provided in 46-18-219 and 46-18-222."

17
18 **SECTION 3. SECTION 45-5-103, MCA, IS AMENDED TO READ:**

19 **"45-5-103. Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate
20 homicide when the person purposely or knowingly causes the death of another ~~human-being person or an unborn~~
21 ~~child~~ but does so under the influence of extreme mental or emotional stress for which there is reasonable
22 explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint
23 of a reasonable person in the actor's situation.

24 (2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in
25 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

26 (3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not
27 an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant
28 is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may
29 present evidence of mitigation.

30 (4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term

of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

~~SECTION 4. SECTION 45-5-201, MCA, IS AMENDED TO READ:~~

~~"45-5-201. Assault. (1) A person commits the offense of assault if the person:~~

~~(a) purposely or knowingly causes bodily injury to another person or an unborn child;~~

~~(b) negligently causes bodily injury to another person or an unborn child with a weapon;~~

~~(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual another person or an unborn child; or~~

~~(d) purposely or knowingly causes reasonable apprehension of bodily injury in another person or an unborn child.~~

~~(2) A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."~~

~~SECTION 5. SECTION 45-5-202, MCA, IS AMENDED TO READ:~~

~~"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another person or an unborn child or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another person or an unborn child.~~

~~(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term not to exceed 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."~~

NEW SECTION. SECTION 4. ADDITIONAL SENTENCE FOR ASSAULT OR AGGRAVATED ASSAULT ON PREGNANT WOMAN. (1) AN OFFENDER WHO IS CONVICTED OF COMMITTING THE OFFENSE OF ASSAULT, AS DEFINED IN 45-5-201, AGAINST A PREGNANT WOMAN SHALL, IN ADDITION TO THE PUNISHMENT PROVIDED FOR COMMISSION OF THE OFFENSE, BE SENTENCED TO A TERM OF IMPRISONMENT IN A STATE PRISON OF NOT MORE THAN 10 YEARS, EXCEPT AS PROVIDED IN 46-18-222.

(2) AN OFFENDER WHO IS CONVICTED OF COMMITTING THE OFFENSE OF AGGRAVATED ASSAULT, AS DEFINED IN 45-5-202, AGAINST A PREGNANT WOMAN SHALL, IN ADDITION TO THE PUNISHMENT PROVIDED FOR COMMISSION OF THE OFFENSE, BE SENTENCED TO A TERM OF IMPRISONMENT IN A STATE PRISON OF NOT MORE THAN 20 YEARS, EXCEPT AS

1 PROVIDED IN 46-18-222.

2 (3) AN ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS SECTION MUST BE IMPOSED PURSUANT TO THE
3 REQUIREMENTS OF 46-1-401 AND MUST RUN CONSECUTIVELY TO THE SENTENCE IMPOSED FOR THE OFFENSE, EXCEPT
4 AS PROVIDED IN 46-18-222.

5
6 NEW SECTION. Section 5. Harm to unborn child -- exceptions. ~~[Sections 1 through 8]~~ SECTIONS
7 45-5-102, 45-5-103, AND [SECTION 4] do not apply to:

8 (1) acts that are committed pursuant to usual and customary standards of medical practice, including
9 but not limited to:

- 10 (a) emergency medical care;
11 (b) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent
12 of the pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; or
13 (2) acts of any woman with respect to her unborn child.

14
15 NEW SECTION. Section 6. Other convictions not barred. A prosecution for or conviction of an
16 offense under ~~[sections 1 through 8]~~ 45-5-102, 45-5-103, OR [SECTION 4] is not a bar to conviction of or punishment
17 for any other crime committed by the defendant as part of the same conduct.

18
19 ~~Section 9. Section 41-1-103, MCA, is amended to read:~~

20 ~~"41-1-103. Unborn children. A Except as provided in [sections 1 through 8], a child conceived but not~~
21 ~~yet born is to be deemed considered an existing person, so far as may be necessary for its interests in the event~~
22 ~~of its subsequent birth."~~

23
24 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable
25 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
26 remains in effect in all valid applications that are severable from the invalid applications.

27
28 NEW SECTION. Section 8. Codification instruction. ~~[Sections 1 through 8]~~ are [SECTION 1] IS
29 [SECTIONS 1 AND 4 THROUGH 6] ARE intended to be codified as an integral part of Title 45, chapter 5, and the
30 provisions of Title 45, chapter 5, apply to ~~[sections 1 through 8]~~ [SECTION 1] [SECTIONS 1 AND 4 THROUGH 6].

31 - END -